

## **SPECIAL USE PERMIT**

<b>FILE NO.</b>	<b>SP16-005</b>
<b>LOCATION OF PROPERTY</b>	<b>5170 Harwood Drive</b>
<b>ZONING DISTRICT</b>	<b>R-1-8 Single Family Residence</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Residential Neighborhood</b>
<b>PROPOSED USE</b>	<b>Special Use Permit to allow retaining walls ranging from 3 feet to 11 feet in height, and removal of two ordinance-sized trees, on a 0.28-gross acre site</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt under CEQA Guidelines Section 15303(e) for New Construction or Conversion of Small Structures.</b>
<b>APPLICANT &amp; OWNER/ADDRESS</b>	<b>Sada Malladi 4618 Salina Drive San José, CA 95124</b>

### **FACTS**

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. **Project Description.** Special Use Permit to allow retaining walls ranging from 3 feet to 11 feet in height, located in the side and rear yards of a single-family residence, and removal of two ordinance-sized trees and eight non-ordinance sized trees, on a 0.28-gross acre site.
2. **Site Description and Surrounding Uses.** The subject 0.28-gross acre site is a flag lot and is entitled for the construction of a detached single-family residence. The site has a slope of approximately 14% and consists of a total of 17 native and non-native trees (labeled # 484 to 500), as documented by a licensed arborist. A total of 12 trees are proposed to be removed. Two ordinance sized trees, one non-native Cedar Tree (#484) and one native Oak Tree (# 487), both approximately 65-inches in circumference, and eight non-ordinance sized trees, seven native Oak Trees (labeled #485, 486, 489, 490, 491, 492, and 493) and one non-native Holly Oak Tree (#488), will be removed. Two ordinance-sized Oak trees (labeled # 495 and 500) were approved with a prior Tree Removal Permit File No. TR14-170. The subject site is surrounded by single-family detached residences on all sides.
3. **General Plan.** The subject site has a designation of Residential Neighborhood on the Envision San Jose 2040 General Plan Land Use/Transportation Diagram. This designation is intended to preserve the existing character of the neighborhood and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern.

4. **Zoning Regulations.** The subject site is in the R-1-8 Single-Family Residence Zoning District, with following regulations:
  - a. *Setbacks.* Under the provisions of Section 20.30.500 of the San José Municipal Code, retaining walls do not have a front, side or a rear setback requirement.
  - a. *Height.* Under the provisions of Section 20.30.500 of the San José Municipal Code, a retaining wall with a maximum height of two feet is permitted. However, the height may be increased with a development permit, as noted in Note 4 of Table 20-70.
5. **Environmental Review.** Under the provisions of 15303(e) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project may be found by the Director of Planning to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Under the CEQA Guidelines Section 15303(e) for New Construction or Conversion of Small Structures, the exemption applies to accessory structures including garages, carports, patios, swimming pools, and fences. The project proposes new retaining walls in the side and rear yards, ranging from 3 feet to 11 feet in height and removal of twelve trees as discussed above.

## FINDINGS

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

1. **General Plan Conformance.** The project is consistent with the Envision San Jose 2040 General Plan Land Use/Transportation Diagram designation of Residential Neighborhood in that the design and construction of retaining wall and fences is consistent with the character of the existing residential neighborhood.
2. **Zoning Code Compliance.** The project is consistent with the regulations of the Zoning Ordinance in the following manner:
  - a. *Setbacks.* The proposed retaining wall will be located in the side and rear yards and conforms to setbacks, as there are no minimum setback requirements for location of retaining walls per Section 20.30.500 of the San José Municipal Code.
  - b. *Height.* The height of the retaining wall varies from 3 feet to 11 feet and hence requires a Special Use Permit, per Section 20.30.500 and Note 4 of Table 20-70 of the San Jose Municipal Code.
3. **CEQA.** Under the provisions of 15303(e) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found by the Director of Planning to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Under the CEQA Guidelines Section 15303(e) for New Construction or Conversion of Small Structures, the exemption applies to accessory structures including garages, carports, patios, swimming pools, and fences. The project proposes new retaining walls in the rear and side yards, ranging in height from 3 feet to 11 feet, and removal of 12 trees, with adequate tree replacement measures, which will not adversely affect the adjacent property or properties. A Geotechnical and Geologic Report, dated June 22, 2015 and July 14, 2014, were submitted and accepted by the City Engineering Geologist and a subsequent Geologic Hazard Clearance was issued in a memo dated September 08, 2015.

4. **Special Use Permit Findings.** Based on the analysis of the above facts with respect to the Special Use Permit findings (Section 20.100.800), the Director of Planning finds that:
- a. The use at the location will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or impair the utility or value of property of other persons located in the vicinity of the site; or be detrimental to public health, safety or general welfare, in that the proposed retaining wall will be similar in design and character to the retaining walls of the neighboring properties.
  - b. The site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas, in that the subject property is on a 0.28-gross acre site with native and non-native trees in the side and rear yards, as documented in the arborist report. Tree removal of up to 10 trees, eight native and two non-native trees, will provide the open space to accommodate the construction of the new retaining wall, located in the side and rear yards, and ranging from 3 feet to 11 feet in height.
  - c. The proposed site is adequately served by highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and by other public or private service facilities as are required, in that the proposed retaining wall will not increase the amount of traffic on the existing roads and public right of way.
5. **Tree Permit Findings.** After investigation and hearing held pursuant to Chapter 13.32 of the San José Municipal Code, the Director of Planning finds:
- a. That the trees are of an affected size, type and condition, and are in such a location in such surroundings, that their removal would not significantly frustrate the purposes of Chapter 13.32; and
  - b. That the location of the trees with respect to the proposed improvement unreasonably restricts the economic development of the parcel in question.

*Analysis: The trees are located where the new residence, retaining walls and other improvements are proposed on an existing vacant parcel. The project proposes to remove a total of twelve trees. Two ordinance-sized trees, one Oak Tree and One Cedar Tree, approximately 65 inches in circumference, eight non-ordinance-sized trees, as discussed before, and as documented by a licensed arborist in a report dated February 12, 2016, are proposed to be removed. Two ordinance-sized Oak Trees were approved for removal with a previous permit File No. TR14-170. The applicant is required to plant a minimum 12 15-gallon or larger replacement trees. Twenty new replacement trees, 16 15-gallon trees and two 24-inch box trees, including two native Oak Trees, will be planted on-site, as documented in a landscape plan dated received 4/4/16, submitted by the applicant.*

In accordance with the findings set forth above, a Special Use Permit for said purpose specified above and subject to each and all of the conditions, hereinafter set forth, is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement of the applicant to be bound by, to comply with, and do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such permit.
2. **Permit Expiration.** This Permit shall automatically expire two years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structure described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, "Proposed New Residence for Mr. Malladi and Mrs. Sarva, 5170 Harwood Road, San Jose, CA 95124" dated received March 25, 2016 and April 4, 2016, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
7. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with

Chapter 20.100 of the San Jose Municipal Code.

8. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
9. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
10. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
11. **Building Materials.** All building materials are to be those specified on the Approved Plan Set.
12. **Fences.** All fences on lots with a single-family dwelling shall conform in every respect to the fence regulations, for heights, setbacks and materials, per Section 20.30.600 of the San Jose Municipal Code.
13. **Landscaping.** Any planting and/or vegetation to screen the retaining wall shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Title 15 of the San José Municipal Code,
14. **Tree Protection Standards.** The applicant shall maintain the trees and other vegetation shown to be retained in this project and as noted on the approved plans. Maintenance shall include pruning and watering as necessary and protection from construction damage. All trees to be preserved shall be permanently identified by metal numbered tags prior to the removal of any tree on the site. All trees on-site and on the adjacent properties shall be protected by fencing of chain link, or other fencing approved by the Director of Planning prior to issuance of the Grading Permit or removal of any tree. Any root pruning of on-site or off-site trees required for construction purposes must receive prior review and approval, and be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the length of the construction that might disrupt the habitat or trees.
15. **Tree Removals/Replacement.** Prior to issuance of Certificate of Occupancy by the Building official, the applicant shall replace the removal of a total of 12 trees with a minimum of twelve (12) 15-gallon, or larger trees, to be planted on the same property as the trees that are removed. The applicant proposes to replace the trees with twenty trees, 16 15-gallon trees and 2 24-inch box trees, including two native Oak trees, as documented in the landscape plan, dated received 4/4/2016, on file with the Department of Planning, Building and Code Enforcement. The applicant shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager, to verify compliance with the replacement requirements. Such evidence shall be labeled *SP16-005* and sent to the Planning Project Manager within 30 days of the replacement of the subject trees. Additionally, following procedures shall be followed:
  - a. A copy of the permit shall be posted at a location where the permit is readable from a common access driveway or roadway.
  - b. The applicant shall maintain the validated permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.

In the event that the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures shall be implemented to the satisfaction of the Director of Planning, Building, and Code Enforcement:



- c. Replacement trees may be planted in the public right-of-way along the project frontage, if street trees do not currently exist or if there are gaps in street tree coverage. Contact the City Arborist at 408-794-1901 or [arborist@sanjoseca.gov](mailto:arborist@sanjoseca.gov) for the designated street tree(s).
  - d. The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.
  - e. An alternative site(s) shall be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjoining properties for screening purposes to the satisfaction of the Director of Planning, Building, and Code Enforcement.
  - f. A donation of \$300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds shall be used for tree planting and maintenance of planted trees for approximately three years. The donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to the issuance of Certificate of Occupancy.
16. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
17. **Public Works Clearance for Building Permit(s):** A Development Clearance shall be obtained from the Public Works Department, and is subject to the following requirements to the satisfaction of the Director of Public Works:
- a. **Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.
  - b. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
  - c. **Transportation:** This project is exempt from the Level of Service (LOS) Policy, and no further LOS analysis is required because the project proposes 15 units of Single Family detached or less.
  - d. **Grading/Geology:**
    - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
    - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4' foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2010 California Plumbing Code or submit a stamped and signed alternate engineered

design for Public Works discretionary approval and should be designed to convey a 10 year storm event.

- iii. A Geotechnical and Geologic Reports, dated June 22, 2015 and July 14, 2014, were submitted and accepted by the City Engineering Geologist and a subsequent Geologic Hazard Clearance was issued in a memo dated September 08, 2015. See Geologic Hazard Clearance memo for additional information and detailed conditions of the clearance.

e. **Shoring:**

- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000.

- f. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

- h. **Parks:** This residential project is subject to the payment of park fees in-lieu of land dedication under either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code).

18. **Revocation, Suspension, Modification.** This Special Use Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Special Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

**APPROVED** and issued on this **13<sup>th</sup> day of April, 2016.**

Harry Freitas, Director  
Planning, Building, and Code Enforcement

Deputy